

REMARKS/ARGUMENTS

Claims 1, 2, 4-12 and 14-29 are active in this application. Support for Claim 30 is found in original Claim 3. Previously, Claim 3 was objected to as not further limiting the subject matter of Claim 1. However, Claim 1 is broader in scope than claim 3. Claim 1 is directed to cream compositions generally, whereas Claim 30 is directed to a subset of such compositions having certain physical characteristics. Applicants respectfully submit that one skilled in the art would recognize that not all cream compositions fall within the criteria set forth in claim 30 and, thus, that not all cream compositions inherently possess the characteristics in claim 3. No new matter is added.

Applicants wish to thank Examiner Jiang for the courteous discussion granted to the Applicants' undersigned representative on November 15, 2004. During this discussion, the undersigned explained that the data in the specification comparing Example 1 and the Comparative Example relating to the amount of water soluble soaps in the compositions demonstrate the advantages of preparing a surfactant system with at least 10% water soluble soap(s) with respect to the total weight of the composition. For reference, the Examiner's attention is directed to page 12, lines 12-21 of the present application which discusses water-soluble soaps, generally.

In particular, this discussion focused on the issues raised by the Examiner in the Office Action regarding the rejection of the claims under 35 U.S.C. § 103 (a) based on the combination of Dahms, Erilli, and Ribier.

More specifically, the undersigned explained the differences between:

- (1) **The Example according to the Invention** which begins at the bottom of page 26 and which contained 28.5% by weight of water soluble soaps (see page 28, lines 9-10), i.e., at least 10% water-soluble soaps, and
- (2) **The Comparative Example**, which begins on page 30 contained only 7% by weight of water soluble soaps (see page 31, lines 4-5 ), i.e., less than 10% water-soluble soaps.

Also during the above-noted discussion, the Examiner's attention was directed to the discussion of the resultant characteristics of the inventive example and the comparative example as presented on page 28, lines 11-15 and page 31, line 6-8, respectively.

The results are summarized in the following table for ease of reference:

	Water-soluble soap (% by wt. of composition)	Appearance at room temperature	Appearance at ambient temperature after heating	Characterization of composition above 45°C
<b>Example according to the Invention</b>	28	White cream <sup>1</sup>	Homogenous cream <sup>2</sup>	at 45°C: "cream is <b>homogenous</b> at the macroscopic scale and consists of a mixture containing a hexagonal phase" <sup>3</sup> at 55°C: "cream is <b>homogenous</b> at the macroscopic scale and consists of a mixture containing a hexagonal phase" <sup>4</sup>
<b>Comparative Example</b>	7.5	White cream <sup>5</sup>	Two-separate phases/heterogeneous <sup>6</sup>	At 50°C: "macroscopic <b>demixing</b> of the cream into two phases . . ." <sup>7</sup>

<sup>1</sup> Page 28, line 11-12.

<sup>2</sup> Page 28, lines 12-15.

<sup>3</sup> Page 29, lines 14-19.

<sup>4</sup> Page 29, lines 20-22.

<sup>5</sup> Page 31, lines 6-7.

These data are further discussed in the specification on page 32, lines 6-17:

The essential difference between the composition of the example according to the present invention and the composition of the comparative example relates to the macroscopic appearance above 45°C: the composition according to the invention gives a homogeneous system, whereas the composition of the comparative example results in demixing.

For the composition according to the invention of Example 1, the system consists above 45°C of a lamellar phase mixed with a direct hexagonal phase, the high viscosity of which makes it possible to avoid macroscopic demixing.

For the composition of the comparative example, the system consists above 45°C of a lamellar phase mixed with a micellar phase, the low viscosity of which does not make it possible to avoid macroscopic demixing, resulting in a heterogeneous composition after returning to ambient temperature.

Still further on page 5, line 20 to page 6, line 1, Applicants describe (emphasis provided):

... the inventors' **surprising discovery** that foaming compositions may be obtained which are in the form of a cream with good stability, even at temperatures of +40 °C to +45 °C, by using a surfactant system such that at least one paracrystalline phase of direct or cubic hexagonal type appears when the said composition is heated to a temperature above 30°C and such that this paracrystalline phase remains present up to at least 45 °C.

There is nothing in Dahms, Erilli, and Riber which describes the selection of a surfactant system with at least 10% water-soluble soaps as claimed nor as the Applicants have stated the surprising advantages that this selection provides in the formulation of a foaming cream composition for topical application. Further, it is believed that all of the

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<sup>6</sup> Page 31, lines 7-8.

<sup>7</sup> Page 31, lines 21-22.

specific Examples of Dahms do not employ water-soluble soaps in amounts as claimed in the present claim, noting the discussion of water-soluble soaps provided on page 12 of the present specification.

In sum, the combination of prior art fails to describe the claimed surfactant system and further, the prior art provides no reasonable suggestion for the advantages of the surfactant system in the claimed foaming composition. Accordingly, withdrawal of this ground of rejection is requested.

Also during the above-noted discussion, the Examiner's attention was directed to the copending application 10/245,569 and the publication of Macauley (U.S. patent no. 6,362,146, of record in the present case). For the Examiner's reference, a copy of the most recent Office Action from the related co-pending application is attached.

As discussed in the copending application, Macauley describes a washing composition comprising surfactants, a polymeric dispersing agent, and an encapsulated sunscreen. The surfactants can be chosen from a wide variety of anionic, nonionic, and zwitterionic surfactants (col. 2-4) and in Example 2 (col. 6). The polymeric dispersing agent can be a cationic derivative of guar gum (col. 5, lines 20-26) and the sunscreen can be encapsulated with wax (col. 6, line 10).

Macauley also describes a "soap-based composition" in Example 2 (col. 8, line 47 through col. 9, line 11), which includes lauric acid, myristic acid, stearic acid, potassium hydroxide and other ingredients. However, Macauley does not describe a foaming cream as claimed herein.

In support of this position, Applicants submitted a Rule 132 Declaration from Carole Guramand and also attach a copy of the Declaration to this response. In this Declaration, compositions according to Examples 1, 2, and 3 of the co-pending application (page 22,

Table I) were compared to Macaulay's Example 2 composition. The resultant compositions were photographed and are presented as Exhibit 1 of the Declaration. The composition of Macaulay is a solid but not a cream unlike the foaming cream compositions claimed in the present application.

Thus, the claimed foaming cream composition is not described by Macaulay nor is there any direction to suggest the preparation of a foaming cream with the components set forth in the present claims.

To the rejection under the doctrine of obviousness-type double patenting over U.S. patent no. 6,733,765, Applicants are filing a Terminal Disclaimer. Further, Applicants note that the filing date of U.S. patent 6,733,765 is June 22, 2001 whereas the priority application of the present application was filed on August 31, 2000. A certified copy of the French priority application along with a request for the priority was filed on August 30, 2001.

Applicants request an indication that the claims in this application are allowable. Early notice of such is also requested.

Respectfully submitted,

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